

D.T.E. 98-57 (Phase I-A) November 17, 2000

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. No. 14 and 17, filed with the Department on September 21, 2000 and October 5, 2000 by Verizon New England, Inc. d/b/a Verizon Massachusetts.

APPEARANCES: Barbara Anne Sousa, Esq.

Bruce P. Beausejour, Esq.

Keefe B. Clemons, Esq.

185 Franklin Street

Boston, MA 02110-1585

-and-

Stephen H. August, Esq.

Keegan, Werlin & Pabian, LLP

21 Custom House Street

Boston, MA 02110-3525

FOR: VERIZON NEW ENGLAND, INC.

D/B/A VERIZON MASSACHUSETTS

Petitioner

Thomas Reilly

Attorney General

By: Karlen J. Reed,

Assistant Attorney General

200 Portland Street, 4th Floor

Boston, MA 02114

FOR: OFFICE OF THE ATTORNEY GENERAL

Intervenor

Alan D. Mandl, Esq.

Mandl & Mandl, LLP

10 Post Office Square, Suite 630

Boston, MA 02109

-and-

Christopher McDonald, Esq.

Cynthia Carney Johnson, Esq.

WorldCom, Inc.

200 Park Avenue, 6th

New York, NY 10166

FOR: WORLDCOM, INC.

Intervenor

John Farley

Network Plus, Inc.

1 World Trade Center, Suite 8121

New York, NY 10048

FOR: NETWORK PLUS, INC.

Intervenor

Eric J. Krathwohl, Esq.

Rich, May, Bilodeau & Flaherty, P.C.

294 Washington Street

Boston, MA 02108

FOR: TELECOMMUNICATIONS RESELLERS ASSOCIATION

FOR: CTC COMMUNICATIONS CORP.

FOR: NETWORK PLUS, INC.

Intervenors

Christopher Moore, Esq.

Sprint Communications Company, L.P.

1850 M Street, N.W., Suite 1110

Washington, DC 20036

FOR: SPRINT COMMUNICATIONS COMPANY, L.P.

Intervenor

Jay E. Gruber, Esq.

Jeffrey F. Jones, Esq.

Kenneth W. Salinger, Esq.

Palmer & Dodge, LLP

One Beacon Street

Boston, MA 02108-3190

-and-

Melinda Milberg, Esq.

AT&T Communications, Inc.

32 Avenue of the Americas, Room 2700

New York, NY 10013

-and-

Patricia Jacobs, Ph.D.

State Manager for Government Affairs

AT&T Communications of New England, Inc.

99 Bedford Street

Boston, MA 02111

-and-

Julie Baerenrodt

AT&T Communications of New England, Inc.

99 Bedford Street

Boston, MA 02111

FOR: AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Intervenor

Stacey L. Parker, Esq., Counsel Director of Regulatory Affairs

James White, Esq., Regulatory Counsel

AT&T Broadband

6 Campanelli Drive

Andover, MA 01810

FOR: AT&T Broadband

Intervenor

Dana Frix, Esq.

Russell M. Blau

Swidler Berlin Shereff Friedman, LLP

3000 K Street, NW, Suite 300

Washington, DC 20007-5116

FOR: RCN-BECOCOM, L.L.C.

FOR: CHOICE ONE COMMUNICATIONS, INC.

Intervenors

Richard Rindler, Esq.

Lori Anne Dolqueist, Esq.

Swidler, Berlin, Shereff & Friedman, LLP

3000 K Street, NW, Suite 300

Washington, DC 20007-5116

-and-

Glenn A. Harris, Esq.

Assistant General Counsel

Government & Industry Affairs

NorthPoint Communications

222 Sutter Street, 7th Floor

San Francisco, CA 94108

FOR: NORTHPOINT COMMUNICATIONS, INC.

Intervenor

Elise P.W. Kiely, Esq.

Helene J. Courard, Esq.

Blumenfeld & Cohen - Technology Law Group

1625 Massachusetts Ave., N.W. Suite 300

Washington, DC 20036

-and-

Alan D. Mandl, Esq.

Mandl & Mandle, LLP

10 Post Office Square - 6th Floor

Boston, MA 02109

-and-

Kimberly A. Scardino, Esq.

Associate General Counsel

Rhythms Links, Inc.

1625 Massachusetts Ave., N.W. Suite 300

Washington, DC 20036

FOR: RHYTHMS LINKS, INC.

Intervenor

Cameron F. Kerry, Esq.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC

One Financial Center

Boston, MA 02111

FOR: GLOBAL NAPS, INC.

FOR: CORECOMM MASSACHUSETTS, INC.

Intervenors

FOR: NET2000 COMMUNICATION SERVICES, INC.

Limited Participant

William J. Rooney, Esq.

General Counsel

Global NAPs, Inc.

10 Merrymount Road

Quincy, MA 02169

FOR: GLOBAL NAPS, INC.

Intervenor

Douglas Denny-Brown, Esq.

RNK, Inc. d/b/a RNK Telecom

1044 Central Street

Stoughton, MA 02072

FOR: RNK, INC. D/B/A RNK TELECOM

Intervenor

Susan Jin Davis, Esq.

Antony Petrilla, Esq.

Covad Communications Company

Hamilton Square

600 14th Street, NW, Suite 750

Washington, DC 20005

FOR: COVAD COMMUNICATIONS COMPANY

Intervenor

Scott Sawyer, Esq.

Vice President, Regulatory Affairs

Conversent Communications of Massachusetts, LLC

222 Richmond Street

Suite 206

Providence, RI 02903

FOR: CONVERSENT COMMUNICATIONS OF MASSACHUSETTS, LLC

Intervenor

Thomas S. Lyle

Regulatory Affairs Manager

Vitts Network, Inc.

77 Sundial Avenue

Manchester, NH 03103

FOR: VITTS NETWORK, INC.

Limited Participant

Peggy Rubino

Regional Vice President - Industry Policy

Z-Tel Communications, Inc.

601 South Harbour Island Boulevard, Suite 220

Tampa, FL 33602

FOR: Z-TEL COMMUNICATIONS, INC.

Limited Participant

E. Ashton Johnston

J. Todd Metcalf

Piper, Marbury, Rudnick & Wolfe, LLP

1200 19th Street, NW

Washington, DC 20036

FOR: DIGITAL BROADBAND COMMUNICATIONS

Limited Participant

Jonathan E. Canis

Enrico C. Soriano

Michael B. Hazzard, Esq.

Kelley, Drye & Warren LLP

1200 19th Street, N.W. Fifth Floor

Washington, D.C. 20036

FOR: INTERMEDIA COMMUNICATIONS, INC.

FOR: Z-TEL COMMUNICATIONS, INC.

Limited Participants

J. Joseph Lydon

Beacon Strategies

11 Beacon Street, Suite 1030

Boston, MA 02108

Limited Participant

Michael D'Angelo, Director Regulatory Affairs

NEXTLINK, 5th Floor

45 Eisenhower Drive

Paramus, NJ 07652

Distribution List

Rodney L. Joyce

Shook, Hardy & Bacon LLP

Hamilton Square

600 14th Street, NW, Suite 800

Washington, DC 20005-2004

FOR: NETWORK ACCESS SOLUTIONS CORP.

Distribution List

ORDER ON MOTIONS OF VERIZON NEW ENGLAND, INC.
D/B/A VERIZON MASSACHUSETTS
FOR PARTIAL RECONSIDERATION AND
FOR EXTENSION OF THE JUDICIAL APPEAL PERIOD

I. BACKGROUND

On September 7, 2000, the Department of Telecommunications and Energy ("Department") issued an Order in docket D.T.E. 98-57 - Phase I ("Phase I Order"). The Phase I Order addressed the outstanding motion for reconsideration filed by Verizon New England, Inc. d/b/a Verizon Massachusetts⁽¹⁾ ("VZ-MA") in response to the Department's original Order, issued on March 24, 2000, in this docket ("Tariff No. 17 Order"). The Phase I Order also reviewed VZ-MA's various Compliance Filings submitted in response to the Tariff No. 17 Order, and directed VZ-MA to file, within four weeks, another Compliance Filing consistent with the findings contained in the Phase I Order.

On September 27, 2000, VZ-MA filed a Motion for Partial Reconsideration of the Phase I Order along with a Motion for Extension of the Judicial Appeal Period.⁽²⁾ No parties filed comments responding to these motions. Thereafter, in accordance with the directive contained in the Phase I Order, VZ-MA filed a Compliance Filing on October 5, 2000.

II. MOTION FOR RECONSIDERATION

A. Standard of Review for Reconsideration

The Department's Procedural Rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England

Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

B. VZ-MA's Motion for Partial Reconsideration

VZ-MA's Motion for Partial Reconsideration ("Motion") of the Department's Phase I Order asks for Department action on a single issue. Specifically, VZ-MA asks the

Department to reconsider its ruling prohibiting VZ-MA from applying a "stop clock" to the Department-approved 76-business day interval for physical collocation when a competitive local exchange carrier ("CLEC") delays the process by failing to deliver its equipment on a timely basis (Motion at 1). VZ-MA contends that its tariff modification is reasonable and reflects the restrictions applicable to Verizon-New York's ("VZ-NY") 76-business day interval, as permitted by the Department's Tariff No. 17 Order (*id.*).

VZ-MA notes that the Tariff No. 17 Order directed that the restrictions for New York's 76-business day provisioning interval be adopted; thus, by including a stop clock for physical collocation in its compliance tariff, VZ-MA argues that it did precisely what the Department ordered in the Tariff No. 17 Order (*id.* at 3). VZ-MA states that the Tariff No. 17 provision for the stop clock mirrors the language of the corresponding VZ-NY tariff provision and attaches a copy of the comparable VZ-NY tariff provisions for the Department's review (*id.*). VZ-MA maintains that either through mistake or inadvertence, the Department's Phase I Order is inconsistent with the prior decision permitting adoption of the VZ-NY restrictions to the 76-business day provisioning interval, and thus reconsideration is warranted (*id.*). No party submitted comments to VZ-MA's Motion.

C. Analysis and Findings

The Department, in the Tariff No. 17 Order at 73-74, permitted VZ-MA to incorporate the same restrictions to VZ-NY's 76-business day physical collocation provisioning interval although the Department did not enumerate the permissible VZ-NY restrictions. A review of the VZ-NY tariff provisions for physical collocation shows that the provisioning interval indeed includes a stop clock approach. Thus, our directive in the Phase I Order to remove the stop clock provision for physical collocation is inadvertently inconsistent with our prior directive in the Tariff No. 17 Order, and amounts to an oversight that merits correction. Accordingly, VZ-MA's Motion is granted. VZ-MA may reinstate in Tariff No. 17 the provision containing the stop clock restriction for physical collocation.⁽³⁾

Lastly, since the Department grants VZ-MA's Motion for Partial Reconsideration of the Phase I Order, VZ-MA's Motion for Extension of the Judicial Appeal Period is moot. No Department ruling is required on that motion. Unless, within seven days, we hear differently from the movant, we will deem the motion for extension withdrawn on the grounds of mootness.

III. ORDER

Accordingly, after due consideration, it is

ORDERED: That Verizon New England, Inc. d/b/a Verizon Massachusetts' Motion for Partial Reconsideration be and hereby is granted; and it is

FURTHER ORDERED: That the parties comply with all other directives contained herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Formerly New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.
2. VZ-MA also filed a Motion to Amend the Procedural Schedule. A ruling on that motion was issued on November 3, 2000 along with a revised procedural schedule.
3. VZ-MA removed Part E, Section 1.1.2.C that was contained in its prior Compliance Filing from its October 5, 2000 Compliance Filing.